

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
VERIZON NORTH INC. AND CONTEL OF THE)
SOUTH, INC. d/b/a VERIZON NORTH SYSTEMS)
FOR COMMISSION FINDING THAT)
BROADBAND SERVICES ARE OFFERED TO AT)
LEAST 50% OF HOUSEHOLDS IN LOCAL)
EXCHANGES WHERE TRANSITIONAL PERIOD)
RATE INCREASES WERE TAKEN ON APRIL 1,)
2008)

CAUSE NO. 43772

FINAL ORDER

APPROVED: FEB 03 2010

BY THE COMMISSION:

Larry S. Landis, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On August 31, 2009, Verizon North Inc. and Contel of the South, Inc. d/b/a Verizon North Systems ("Verizon"), filed a petition ("Petition") for a finding by the Indiana Utility Regulatory Commission ("Commission") that pursuant to Ind. Code § 8-1-2.6-1.3(e) Verizon offers broadband services to at least fifty percent (50%) of the households in the local exchange areas of the State of Indiana where Verizon enacted a one dollar (\$1) increase in residential flat monthly basic telecommunications service rates on April 1, 2008. In addition, Verizon filed a *Petition for Confidential Treatment and Affidavit of Neil Krevda* requesting certain information provided in Exhibit D ("Confidential Information") to the Petition be protected from public disclosure as confidential trade secrets under applicable law, including 170 I.A.C. § 1-1.1-4, I.C. § 8-1-2-29, I.C. § 5-14-3-1 and I.C. § 24-2-3-1, *et seq.*

On September 11, 2009, in lieu of convening a prehearing conference pursuant to 170 I.A.C. § 1-1.1-15(e), the Presiding Officers issued a docket entry requiring the parties to submit a stipulated procedural schedule for the submission of testimony and the establishment of a date for an evidentiary hearing. Pursuant to that docket entry, Verizon and the Indiana Office of Utility Consumer Counselor ("OUCC") submitted a proposed stipulated procedural schedule on September 22, 2009. On September 24, 2009, the Presiding Officers issued another docket entry adopting the proposed procedural schedule submitted by the parties and issued a Legal Notice of Public Hearing to be conducted at 9:30 a.m. (EST) on November 13, 2009 in the Commission Judicial Courtroom 222 in the National City Center, 101 West Washington Street, Indianapolis, Indiana.

On October 2, 2009, the Presiding Officers issued a docket entry finding that Verizon had provided sufficient information for a preliminary determination that the Confidential Information should be protected from public disclosure to facilitate Commission review. On October 2, 2009, Verizon electronically filed the Confidential Information.

On October 9, 2009, Verizon prefiled the Direct Testimony of Mitzi L. Bishop to support

its *Petition*. On October 23, 2009, the OUCC filed its *Notice of Intent Not to File Testimony* in this Cause. On October 30, 2009, Verizon filed its notice that it would file no rebuttal testimony.

On October 21, 2009, the Presiding Officers issued a docket entry with questions for Verizon to answer by October 30, 2009, to which Verizon timely responded. On November 6, 2009, the Presiding Officers issued another docket entry propounding additional questions for Verizon to answer by November 10, 2009, to which Verizon timely responded.

Pursuant to proper notice of hearing published as required by law, proof of which was incorporated into the record by reference, an evidentiary hearing was held in this Cause on Friday, November 13, 2009, commencing at 9:30 a.m. EST in the Commission Judicial Courtroom 222 in the National City Center, 101 West Washington Street, Indianapolis, Indiana. The Petitioner and OUCC were duly represented by counsel at the evidentiary hearing. The prefiled testimony was admitted into the evidentiary record of this proceeding without objection. No members of the general public appeared or sought to testify at the hearing.

During the evidentiary hearing, the Presiding Officers required Verizon to late-file interest rate calculation information by December 14, 2009, or file a status report on its efforts to obtain the necessary information from various Indiana banks and an estimate of when the required information would be ready to file. In addition, Verizon orally agreed to waive the 90-day Finding Requirement in I.C. § 8-1-2.6-1.3(e), as further documented in a subsequent filing Verizon made on November 17, 2009.

On December 11, 2009, Verizon late-filed its *Provision of Average Interest Rates* with the Commission as requested by the Presiding Officers during the evidentiary hearing.

Based upon the applicable law and the evidence of record herein, and being duly advised in the premises, the Commission now finds as follows:

1. **Notice and Jurisdiction.** The Commission published due, legal and timely notice of all public hearings conducted in this Cause. Verizon is an “incumbent local exchange carrier” within the meaning of I.C. § 8-1-2.6-0.2 and a “provider” that offers basic telecommunications services during the “rate transition period” as those terms are used in I.C. § 8-1-2.6-1.3. The Petition seeks a finding from the Commission that Verizon satisfied broadband deployment requirements in I.C. § 8-1-2.6-1.3. Accordingly, the Commission has jurisdiction over Verizon and the subject matter of this Cause.

2. **Relief Requested.** Verizon requests that the Commission issue an Order finding that Verizon: (a) offers broadband service at the required transmission speeds to at least fifty percent (50%) of the households in the local exchange areas where Verizon enacted a \$1 increase in flat monthly basic telecommunications service rates on April 1, 2008; and (b) has met the statutory requirements to maintain such an increase in all the applicable local exchange areas, except the Corydon exchange. Verizon also seeks an order confirming its planned refund to Corydon customers (or its payment to the Commission, if so ordered) the total amount of the rate

increase collected during the rate transition period (in this case, the 15 months from April 1, 2008 through June 30, 2009), plus interest as determined by the Commission, within two billing cycles after a final non-appealable Order is issued in this Cause.

3. Summary of Verizon's Evidence.

(a) *Bishop's Direct Testimony.* Mitzi L. Bishop testified on behalf of Verizon. Ms. Bishop testified that the service that Verizon offers that meets the definition of basic telecommunications service is Verizon's Residential 1-Party service ("R1 rates") as referenced in Verizon's IURC Tariff No. T-2, Section 4, Sheet 2. Ms. Bishop noted that Verizon withdrew the referenced tariff on July 1, 2009 in accordance with I.C. § 8-1-2.6-13(e)(1).

Ms. Bishop also testified that Verizon increased its R1 rates by \$1 in 131 local exchange areas in the State of Indiana on April 1, 2008. Ms. Bishop indicated that Verizon notified the Commission of the increase when it made its 30-day advance tariff filing on February 29, 2008 and although not required, Verizon also sent the Commission a confirming letter regarding the increase on June 18, 2008. Ms. Bishop stated that Verizon also provided a 30-day advance notice of the increase to customers in the affected exchanges via a bill message. Ms. Bishop testified that this was the only R1 rate increase Verizon initiated during the rate transition period.

Ms. Bishop testified that Verizon deployed broadband services to comply with the statutory requirement that it provide such service either via copper wire or fiber optic cable (or both) to the 131 local exchange areas where the R1 rate increases were implemented on April 1, 2008. Ms. Bishop stated that Verizon offers broadband speeds in these exchange areas up to 7.1 Mbps downstream and 768 Kbps upstream, which is well above the speed requirements of I.C. § 8-1-2.6-1.3(a). Ms. Bishop conveyed that Verizon deployed broadband capability in the last affected exchange (excluding the Corydon exchange) in March 2009, which is within the required 18-month period following the rate increase.

Ms. Bishop also explained that a household is a distinct address that Verizon's facilities (either copper or fiber) pass, whether vacant or occupied, in a given local exchange area. Ms. Bishop further stated that if Verizon is able to provision a dial tone through its own retail service, unbundled network elements or resale, Verizon includes that location in its provisioning system, which is the source of the data utilized to calculate the broadband capability measures. Ms. Bishop indicated that Verizon did not include large businesses or enterprise customer locations in this calculation.

Ms. Bishop testified that Verizon meets the fifty percent (50%) broadband capability criteria in each local exchange area in which Verizon implemented the R1 rate increase during the rate transition period except in the Corydon exchange. Ms. Bishop provided a Confidential Exhibit showing the total number of households in each local exchange area in which Verizon implemented the R1 rate increase on April 1, 2008. The exhibit also provided the number of households in each local exchange area in which broadband services meeting the speed requirements were available as of April 2009. Ms. Bishop noted that the data showed that all

exchanges (except Corydon) were at or above the 50% broadband capability level at that time, while Corydon was slightly below the 50% requirement at 48%.

Ms. Bishop maintained that Verizon plans to refund \$15 to affected customers residing in the Corydon exchange – representing the \$1 R1 rate increase that was in effect from April 1, 2008 through June 30, 2009 (the last 15 months of the three-year transition period), plus interest. She stated that if the Commission determines that the refund should instead be paid to the Commission pursuant to I.C. § 8-1-2.6-1.3(f)(2), Verizon will abide by the Commission's ruling. Ms. Bishop avowed that Verizon will make the required refund to affected Corydon customers (or make the required payment to the Commission, if so directed) within two billing cycles after the Commission issues a final non-appealable Order in this Cause.

Ms. Bishop further testified that the appropriate interest to be paid to affected Corydon customers pursuant to I.C. § 8-1-2.6-1.3(f) must be determined by the Commission based on the average interest rate paid to depositors during the eighteen (18) months after the provider's first rate increase (in this case, from April 2008 through September 2009) by the fifteen (15) largest banks with principal offices located in Indiana. Verizon filed the calculated average annual interest rate of the 15 largest Indiana banks on December 11, 2009, showing an applicable annual interest rate of two-tenths of one percent (0.2%).

(b) Verizon's Response to October 21, 2009 Docket Entry. In response to the Presiding Officers' October 21 Docket Entry questions, Verizon indicated that in determining the denominator used in calculating the percentage of broadband-capable households, Verizon included distinct addresses (both residential and small business) to identify broadband service locations or households (as does AT&T and possibly other providers) because removing small business makes no material impact on the calculation and a customer could order broadband service from that distinct address. Verizon also explained that in its quest to determine whether a household is broadband-qualified, Verizon first determined whether each household in an exchange where broadband was deployed met one of the following three conditions: 1) Full loop in working condition; 2) Loop left in jumper; or 3) Express Dial Tone (EDT).

If one of these three conditions was present at the household, then Verizon's engineering system (which contains all of the engineering records) accessed that household's records and obtained all of the specifications that make up that particular loop, such as length, gauge, and loadings. Verizon's engineering system then fed that data into the Loop Qualification Processor system. Some of Verizon's offices are equipped with test equipment that will test the working loop's ability to support broadband frequencies. Verizon used that measurement for decibel loss as the determining factor for the qualified loop. The test equipment electrically tested the ability of the loop to carry signals in the broadband frequency range. Loops with 70 decibels or less of loss at these frequencies will support broadband products. Loops with loss of more than 70 decibels are not capable of supporting broadband services. Loops that are loaded, however, cannot be tested in this electronic manner. For those locations, Verizon applies a formula to calculate the equivalent working loop length using the gauge of the cable. This process is called "getting the loop to an EWL" or equivalent working length. This formula is $EWL = 26g + (24g \times$

.75) + (22g x .6) + (19g x .4). As an example, for a loop that is 7,785 feet of 26 gauge cable and 3,595 feet of 24 gauge cable with no 22 or 19 gauge cable, the EWL would be:

$$\text{EWL} = 26g + (24g \times .75) + (22g \times .6) + (19g \times .4)$$

$$\text{EWL} = 7785 + (3595 \times .75) + (0 \times .6) + (0 \times .4)$$

$$\text{EWL} = 7785 + 2696.25 + 0 + 0$$

$$\text{EWL} = 10,481.25, \text{ rounded to } 10,481 \text{ loop length}$$

For offices that are equipped with ADSL cards, all loops that are within 14,200 feet EWL of the DSLAM are qualified. For offices equipped with ADSL2 cards, all loops that are within 16,000 feet EWL of the DSLAM are qualified.

Verizon also indicated that whether the broadband available to those households meets the speed requirements in the statute is based on two elements: 1) the speed that the loop can support, as determined by frequency testing (if available) or EWL parameters; and 2) the CLLI code identifying the office from which the loop originates. If the office (CLLI code) is identified as being equipped with ADSL or ADSL2 cards, the speed parameters in Verizon's procedural matrices are applied to the loop information. The matrices show how Verizon's loop qualifying systems are programmed. The speeds available to broadband products customers are calculated based on the loop length or decibel loss of the loop associated with the household premise. Higher broadband speeds are present in shorter loop lengths. However, the product speeds available to customers within 14,200 feet or 16,000 feet EWL (depending on the ADSL or ADSL2 cards in the applicable office) or with less than 70 decibels loss meet the required statutory data transfer speeds (1.5M downstream and 384K upstream). Customers may elect to subscribe to lesser speeds even though they may be within the qualified loop length limits or decibel loss limits.

(c) Verizon's Response to November 6, 2009 Docket Entry. In its November 6, 2009 Docket Entry, the Presiding Officers asked questions regarding "loops that are loaded", whether broadband can be provided on those "loaded" loops, or what work would be required to enable those loops to provide broadband service. In its response, Verizon stated that when a customer orders broadband service over a loop that is loaded, the loads must be removed from the loop. Verizon indicated that the engineers will write a work order to have the loads removed and update the facility records accordingly, and that such activity could take up to eight days from the order date to provision. Verizon stated that loaded loops were included in the count of qualified loops provided in its testimony.

Verizon also responded to the Commission that offices that are broadband capable are not equipped for 100% take rates on all qualified lines, and that office capacity is monitored and additional ADSL cards are added when the vacant port capacity reaches an established threshold. Verizon stated that the threshold that triggers a work order to add broadband capacity will vary depending on the size of the office and the rate of broadband orders in the office. Generally, that threshold is based on approximately eight weeks-to-exhaust so more cards will be available to ensure provision of broadband to all customers that order broadband service.

4. **Commission Discussion and Findings.** I.C. § 8-1-2.6-1.3 set the requirements for providers that chose to increase monthly basic telecommunications service rates during the rate transition period, between July 1, 2006 and June 30, 2009. The statutory requirements included 30-day advance notification of the increase to the Commission and to affected customers. The statute prohibited more than one increase in monthly basic telecommunications service rates during any successive 12-month period within the rate transition period. In addition, each allowable increase in monthly rates could not exceed \$1 during any 12-month period.

I.C. § 8-1-2.6-1.3 required providers to offer broadband service at required average speeds of at least 1.5 megabits per second downstream and at least 384 kilobits per second upstream to at least 50% of the households in the local exchange areas where such rate increases were instituted within 18 months of the initial authorized rate increase. If the provider did not offer broadband to at least 50% of the households in the exchange within that 18-month period, the provider had to either refund incremental revenue from the rate increase, plus interest, to affected customers, or pay an equivalent amount to the Commission as a civil penalty, if so directed by the Commission.

We find that Verizon has met all of the requirements of I.C. § 8-1-2.6-1.3 in the 131 local exchange areas where it raised its rates, except as to the Corydon exchange, where Verizon is under the 50% broadband availability requirement. Thus, pursuant to I.C. § 8-1-2.6-1.3(e) we find that Verizon offers broadband services to at least fifty percent (50%) of the households in all local exchange areas in the State of Indiana where Verizon enacted a one dollar (\$1) increase in residential flat monthly basic telecommunications service rates on April 1, 2008, except for the Corydon exchange. Verizon will therefore refund the \$1 increase for the 15-month period between April 1, 2008 and June 30, 2009 to residential customers in Verizon's Corydon exchange within two billing cycles of the effective date of this Order, for a total refund of \$15 per customer, plus interest.

We also conclude that the appropriate interest to be added to the Corydon refund is the annual interest rate of two-tenths of one percent (0.20%), as determined based on the average annual interest rate paid to depositors during the 18 months between April 1, 2008 and September 30, 2009, by the fifteen largest banks with principal offices located in Indiana. Verizon shall utilize that interest rate in calculating the interest applicable to refunds to be paid to all affected Corydon customers within two billing cycles of the effective date of this Order.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Commission finds that Verizon offers broadband service at or above the required transmission speeds to at least fifty percent (50%) of the households in all but one of the local exchange areas where Verizon implemented a \$1 increase in its flat monthly basic telecommunications service rates on April 1, 2008 and has met all of the statutory requirements for such an increase in all affected local exchange areas except the Corydon exchange.

2. Consistent with the terms of this Order, Verizon shall refund \$15 plus interest at an annual rate of two-tenths of one percent (0.20%) to all affected Corydon customers within two billing cycles of the effective date of this Order.

3. This Order shall be effective on and after the date of its approval.

HARDY, ATTERHOLT, GOLC AND ZIEGNER CONCUR; LANDIS ABSENT:

APPROVED: FEB 03 2010

**I hereby certify that the above is a true
and correct copy of the Order as approved.**

A handwritten signature in cursive script, reading "Brenda A. Howe", is written over a horizontal line.

**Brenda A. Howe
Secretary to the Commission**